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24 SHACK-FINDLAY AUTOMOTIVE, LLC

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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,
Plaintiff,

vs.

SHACK-FINDLAY AUTOMOTIVE,
LLC d/b/a FINDLAY HONDA, and
FINDLAY AUTOMOTIVE GROUP,
and Does 1 – 10 Inclusive,
Defendants.

Case No.: 2:10-cv-01692-KJD-RJJ

Consent Decree; Order

I. INTRODUCTION

Plaintiff the U.S. Equal Employment Opportunity Commission and Defendant Shack-Findlay Automotive, LLC d/b/a Findlay Honda Henderson (“Defendant” or “Findlay Honda Henderson”) hereby stipulate and agree to entry of this consent decree and order (“Decree”) to resolve the EEOC’s complaint in U.S. Equal Employment Opportunity Commission v. Shack-Findlay Automotive, LLC d/b/a Findlay Honda, et al., 2:10-cv-01692-KJD-RJJ (the “Action”). The EEOC brought this Action pursuant to Title VII of the Civil Rights Act of 1964. In this Action, the EEOC alleged that Defendant discriminated against Charging Parties Sydney Robinson and Jason Grinstead by subjecting them to racial harassment, disparate treatment, and retaliation. Defendant denied those allegations.

II. PURPOSES AND SCOPE

A. This Decree is made and entered into by the EEOC and Defendant (collectively, the “Parties”).

1 B. Any provision intended to bind or be enforceable against Defendant
2 will bind and be enforceable against Defendant's officers, directors, agents,
3 successors, and assigns.

4 C. The Parties have entered into this Decree in order to:

- 5 1. provide appropriate monetary and injunctive relief;
- 6 2. ensure Defendant's employment practices comply with Title
7 VII;
- 8 3. ensure that Defendant's managers, supervisors and employees
9 are given training on their obligations under Title VII;
- 10 4. ensure a work environment free from hostility and retaliation;
- 11 5. provide an appropriate and effective mechanism for handling
12 discrimination complaints in the workplace; and
- 13 6. avoid the time, expense, and uncertainty of further litigation.

14 D. The scope of this Decree will be company-wide, except as otherwise
15 specified in this Decree.

16 E. The EEOC is the only party with standing to enforce this Decree.
17

18 III. RELEASE OF CLAIMS

19 A. This Decree fully and completely resolves all issues, claims, and
20 allegations raised in the complaint filed by the EEOC in this Action.

21 B. Nothing in this Decree will be construed to preclude the EEOC from
22 moving to enforce this Decree in the event that Defendant fails to perform the
23 promises contained herein.

24 C. Nothing in this Decree will be construed to limit or reduce
25 Defendant's obligation to comply with Title VII or any other federal law.
26
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1 D. This Decree in no way affects the EEOC's right to bring, process,
2 investigate or litigate other charges that may be in existence or may later arise
3 against Defendant.
4

5 **IV. JURISDICTION AND FINDINGS**

6 A. The Court has jurisdiction over the Parties and the subject matter of
7 this Action. The complaint in this Action asserts claims that, if proven, would
8 authorize the Court to grant the equitable relief set forth in this Decree.
9

10 B. The terms and provisions of this Decree are fair, reasonable, and just.

11 C. This Decree conforms with the Federal Rules of Civil Procedure and
12 Title VII and does not derogate the rights or privileges of any person.

13 D. The Court will retain jurisdiction over this Action during the duration
14 of the Decree for the purpose of entering any order, judgment, or decree necessary
15 to implement the relief provided herein.
16

17 **V. NO ADMISSION OR DETERMINATION OF THE MERITS**

18 This Decree does not constitute and shall not be deemed to be an admission
19 by any Party about the merits of the allegations, claims or defenses of any other
20 Party. By stipulating and agreeing to the entry of this Decree, Defendant does not
21 admit, and in fact denies, that it has violated Title VII.
22

23 **VI. EFFECTIVE DATE AND DURATION**

24 A. The provisions contained herein are effective immediately upon the
25 date which this Decree is entered by the Court (the "Effective Date").

26 B. This Decree will remain in effect for 2.5 years after the Effective
27 Date.
28

1 **VII. MODIFICATION AND SEVERABILITY**

2 A. This Decree constitutes the complete understanding of the Parties with
3 respect to the matters contained herein.

4 B. By mutual agreement of the Parties, this Decree may be amended in
5 the interests of justice and fairness in order to effectuate its provisions.

6 C. No amendment of any provision of this Decree will be effective
7 unless made in writing and signed by an authorized representative of each of the
8 Parties.

9 D. If one or more of the provisions of this Decree is rendered
10 unenforceable the remaining provisions will remain in effect.
11

12 **VIII. COMPLIANCE AND RESOLUTION**

13 A. The Parties agree that if the EEOC has a good and sufficient basis to
14 believe that Defendant has failed to comply with any provision of this Decree, the
15 EEOC may file a motion before this Court to enforce the Decree, subject to
16 Paragraph "B" below. Prior to initiating such action, the EEOC will notify
17 Defendant, in writing, of the nature of the dispute. This notice will specify the
18 particular provision(s) that the EEOC believes Defendant has breached. The
19 Parties agree to cooperate with each other and use their best efforts to resolve any
20 dispute referenced in the EEOC's notice.
21

22 B. Defendant will have thirty days from the date the EEOC provides
23 written notice of an alleged breach of this Decree to attempt to resolve or cure the
24 breach. If thirty days pass without resolution or agreement to extend the time
25 further, the EEOC may petition this Court for resolution of the dispute, seeking all
26 available relief, including an extension of the term of the Decree for such period of
27 time as Defendant is shown to be in breach of the Decree.
28

1 **IX. MONETARY AND CLAIMANT-SPECIFIC RELIEF**

2 A. A total of one hundred and fifty thousand dollars (\$150,000.00) (the
3 “Settlement Sum”) will be paid on behalf of Defendant to be distributed, at the sole
4 discretion of the EEOC, between Sydney Robinson and Jason Grinstead
5 (“Claimants”).

6 B. The EEOC has designated the Settlement Sum as non-wage
7 compensation under Title VII, and no tax withholding will be made. However,
8 Defendant will report the entire amount of the Settlement Sum on IRS Form 1099
9 as having been paid to Claimants, and Claimants will be solely responsible to remit
10 to any and all federal and/or state tax authorities any taxes due on such payments.
11 Defendant will not be liable or responsible for payment of any taxes to any taxing
12 authorities on behalf of Claimants relating to payments hereunder.

13 C. The EEOC will provide Defendant with a list identifying each
14 Claimant’s portion and amount of the Settlement Sum and the name and address to
15 which each Claimants’ portion and amount of the Settlement Sum will be
16 delivered. Defendant will send a check, via certified mail, to each Claimant in the
17 amount specified within fifteen days of the Effective Date.

18 D. Within ten business days of the issuance of each settlement check
19 Defendant will provide a copy of each check and related correspondence to Anna
20 Y. Park, Regional Attorney, U.S. Equal Employment Opportunity Commission,
21 255 East Temple Street, 4th Floor, Los Angeles, CA 90012.

22 E. Other Non-Monetary Terms. Defendant will refrain from providing
23 negative references about Claimants to prospective employers and will limit
24 employment references related to Claimants to verifying whether the identified
25 Claimant was employed by Defendant, the last position in which the Claimant was
26 employed, and the duration of employment with Defendant. Defendant will
27 reclassify the termination of each Claimant to “voluntary resignation.”
28

1 **X. GENERAL INJUNCTIVE RELIEF**

2 A. Non-Discrimination

3 1. *Discrimination Because of Race.* Defendant and its directors,
4 officers, agents, management (including all supervisory and lead employees),
5 successors, assigns, and all those in active concert or participation with them, or
6 any of them, hereby agree not to:

- 7 (a) discriminate against persons on the basis of race;
8 (b) engage in or be a party to any action, policy, or practice
9 that discriminates against any employee because of race;
10 or
11 (c) create, facilitate, or permit a hostile work environment.

12 2. *Retaliation.* Defendant, its directors, officers, agents,
13 management (including all supervisory and lead employees), successors, assigns,
14 and all those in active concert or participation with them, or any of them, hereby
15 agree not to engage in, implement, or permit any action, policy, or practice that
16 unlawfully retaliates against any current or former employee or applicant because
17 he or she has in the past, or during the term of this Decree:

- 18 (a) opposed any practice that he or she reasonably believed
19 to be discriminatory, harassing, or retaliatory;
20 (b) filed a charge with the EEOC alleging such a practice;
21 (c) participated in any manner in any investigation
22 (including any internal investigation undertaken by
23 Defendants) relating to any claim of a Title VII violation;
24 (d) was identified as a possible witness or claimant in this
25 Action;
26 (e) asserted any rights under this Decree; or
27
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1 (f) sought and/or received any Settlement Amount in
2 accordance with this Decree.

3 B. Posting

4 Within ten business days after the Effective Date and for the duration of the
5 Decree, Defendant will post the notice (attached as "Exhibit A") of the terms of
6 this Decree in a clearly visible location in its employee break room.

7 C. Equal Employment Opportunity Consultant

8 Within thirty days after the Effective Date, Defendant will retain Anthony
9 Martin, Esq., of Ogletree Deakins, as an Equal Employment Opportunity
10 Consultant ("Consultant") to monitor Defendant's compliance with Title VII and
11 this Decree. For the term of the Decree, the Consultant's responsibilities will
12 include:
13

14 1. ensuring that all employees, including management,
15 supervisory, and human resources employees, are trained on their rights and
16 responsibilities under Title VII and this Decree, including the responsibility to
17 provide a workplace free of discrimination, harassment, and retaliation;

18 2. ensuring that all employees, including management,
19 supervisory, and human resources employees, are trained on Defendant's revised
20 policies and procedures relating to discrimination, harassment, and retaliation;

21 3. monitoring any investigation of any complaint of
22 discrimination, harassment, or retaliation to ensure compliance with Title VII and
23 this Decree;

24 4. ensuring that Defendant properly communicates with
25 complainants as required by this Decree;

26 5. ensuring that Defendant creates a centralized system of tracking
27 discrimination, harassment, and retaliation complaints, as required by this Decree;
28

1 6. ensuring that Defendant's performance and discipline policies
2 hold employees and managers accountable for failing to take appropriate action
3 regarding complaints of discrimination, harassment, or retaliation, or for engaging
4 in conduct prohibited under Title VII or this Decree;

5 7. preparing a semi-annual report on Defendant's compliance with
6 Title VII and this Decree;

7 8. ensuring that Defendant timely submits all reports required by
8 this Decree; and

9 9. ensuring Defendant's full compliance with the spirit and the
10 letter of the terms of this Decree.

11 D. Revised Policy and Complaint Procedure

12 1. The revised policy and complaint procedure ("revised policy")
13 apply company wide and to all Findlay Automotive Group dealerships. Within
14 thirty days of the effective date, the revised policy and complaint procedure will be
15 distributed to all employees of the Findlay Automotive Group member dealerships.
16 Defendant will verify distribution of the revised policy, in writing, to the EEOC
17 within sixty days of the effective date.

18 2. Defendant has revised its policies and procedures on
19 discrimination, harassment, and retaliation, including the complaint procedure, as
20 described below.

21 3. Defendant has submitted to EEOC a copy of the revised
22 policies.

23 4. The revised policy includes:

- 24 (a) a clear explanation of prohibited conduct, including
25 examples; and
26 (b) a complete copy of the revised complaint procedure
27 described below.
28

1 5. The revised policy states that all employees are responsible for
2 adhering to the provisions of the policy and maintaining a work environment that is
3 free from discrimination and harassment. It assures employees that Defendant will
4 hold all employees accountable for engaging in conduct prohibited under Title VII
5 or this Decree.

6 6. The revised policy clearly states that:

- 7 (a) an employee who believes that he or she has suffered
8 discrimination, harassment, or retaliation may file an
9 internal complaint using Defendant's internal complaint
10 procedure;
11 (b) employees may initiate an internal complaint verbally or
12 in writing to any appropriate person, and no special form
13 is required;
14 (c) Defendant will not tolerate retaliation against any
15 employee for making a complaint, and prohibit
16 employees from hindering its internal investigations and
17 complaint procedure; and
18 (d) if an allegation of discrimination or retaliation against
19 any employee is substantiated, then such conduct will
20 result in appropriate discipline, up to and including
21 discharge.
22

23 7. The revised policy ensures that Defendant:

- 24 (a) maintains the confidentiality of the complaint,
25 complainant, and investigation to the fullest extent
26 possible;
27 (b) takes every reasonable step to promptly resolve
28 complaints;

- (c) promptly commences a thorough investigation; and
- (d) to the extent necessary and possible, interviews all relevant witnesses, including the complainant, and reviews all relevant documents.

8. The revised policy does NOT require that the complainant:

- (a) confront his or her harasser; or
- (b) file an internal complaint instead of, or in addition to, an external complaint.

9. The Consultant will track all complaints filed under the revised policy and retain records regarding investigation and resolution of all such complaints, including but not limited to those complaints made through the hotline. The Consultant will also ensure that Defendant publicizes the revised complaint procedures and will monitor Defendant's investigation and resolution of any complaints made.

E. Training.

1. All employees of Defendant who are not required to undergo the training identified in subsection 2 below will be required to attend a live training program of at least one hour regarding discrimination, harassment, and retaliation. The training will be mandatory and will occur once every year for the term of this Decree. The first training will occur within sixty (60) days after the Effective Date. Any employee who fails to attend any scheduled training will be trained within thirty (30) days of the live training set forth above.

2. Every manager, supervisor, and human resource employee of Defendant will be required to attend live Management Training of at least three hours duration once every year for the term of this Decree. The first Management Training will occur within sixty (60) days after the Effective Date.

1 3. Any employee who fails to attend any scheduled training will
2 be trained within (30) days of the live training set forth above.

3 4. All trainings under this Decree will include review of EEO
4 Law; every employees' rights and responsibilities under Title VII and this decree;
5 and Defendant's revised policies and procedures for reporting and handling
6 complaints of discrimination, harassment, and retaliation.

7 5. All Management Training will include training on how to
8 properly handle and investigate complaints of discrimination, harassment, and
9 retaliation in a fair and neutral manner; how to take preventive and corrective
10 measures against discrimination, harassment, and retaliation; and how to recognize
11 and stop discrimination, harassment, and retaliation.

12 6. Within thirty days of the date of hire, for the remainder of the
13 term of this Decree, every new employee, including managerial, supervisory, and
14 human resources employees, will receive the appropriate training described above.

15 7. Within thirty days of the date of promotion, for the remainder
16 of the term of this Decree, every employee promoted from a staff position to a
17 managerial, supervisory, or human resources position will receive the above
18 described Management Training.

19 8. Any employee required to attend any training under this Decree
20 will verify in writing his or her attendance at each training.

21 9. Within thirty days after the Effective Date, Defendant will
22 submit to EEOC a description of the trainings to be provided and an outline of the
23 curriculum developed for the trainees.

24 10. Upon receipt, the EEOC may provide comment within thirty
25 days regarding any necessary revisions to the training.

26 11. Defendant will give the EEOC a minimum of seven business
27 days advance written notice of the date, time and location of each of the annual
28

1 trainings provided pursuant to this Decree. An EEOC representative may attend
2 any such training, at the sole discretion of the EEOC.

3 4 **XI. RECORD-KEEPING**

5 Defendant will work with the Consultant to establish a record-keeping
6 procedure that provides for the centralized tracking of discrimination, harassment,
7 and retaliation complaints and the monitoring of such complaints to prevent
8 retaliation. The records to be maintained will include all documents and forms
9 that:

- 10 A. are generated in connection with any complaint;
- 11 B. acknowledge employees' receipt of the revised anti-discrimination,
12 anti-harassment, and anti-retaliation policy; and
- 13 C. verify the occurrence of all training sessions and names and positions
14 of all attendees for each session as required under this Decree;
- 15 D. are generated in connection with the monitoring, counseling, and
16 disciplining of employees whom Defendant or the HR Department determines
17 have engaged in behavior that may be discriminatory, harassing and/or retaliatory;
18 and
- 19 E. are generated in connection with confidential follow-up inquiries into
20 whether any complainant believes he or she has been retaliated against.

21
22 Defendant will send copies of the aforementioned records to the EEOC
23 within ten business days following a written request by the EEOC.

24 25 **XII. REPORTING**

26 In addition to the notice and reporting requirements above, Defendant will
27 provide the following reports to the EEOC in writing, by mail or e-mail:
28

1 A. Within ninety days after the Effective Date, Defendant will submit to
2 EEOC an initial report containing:

3 1. a summary of the procedures and record-keeping methods
4 developed with the Consultant for centralized tracking of discrimination,
5 harassment, and retaliation complaints and the monitoring of such complaints;

6 2. a statement confirming that the required notices pertaining to
7 this Decree have been posted; and

8 3. a statement confirming all training has been completed.

9 B. Defendant will also provide the following reports semi-annually
10 throughout the term of this Decree:

11 1. complete attendance lists for all training sessions required
12 under this Decree that took place during the previous six months;

13 2. a description of all discrimination, harassment, and retaliation
14 complaints made, investigated, or resolved in the previous six-months, including
15 the names of the complainants; the nature of the complaint; the names of the
16 alleged perpetrators of discrimination, harassment, or retaliation; the dates of the
17 alleged harassment or retaliation; a brief summary of how each complaint was
18 resolved; and the identity of each of the employee(s) who investigated or resolved
19 each complaint and the identity and most recent contact information for each
20 witness identified by the complainant and/or investigation; and

21 3. an analysis of the monitoring done when more than one
22 complaint is filed by or against a particular employee, as well as any investigation
23 or resolution.

24 C. A report detailing any planned changes to the policies, procedures or
25 record-keeping methods for complaints, at least thirty days prior to implementing
26 such changes.
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1 **XIII. COSTS OF CONSENT DECREE**

2 Defendant will bear all costs associated with their administration and
3 implementation of its obligations under this Decree.

4
5 **XIV. COSTS AND ATTORNEYS' FEES**

6 Each Party will bear its own costs of suit and attorneys' fees.

7
8 **XV. MISCELLANEOUS PROVISIONS**

9 A. During the term of this Decree, Defendant will provide any potential
10 successor-in-interest with a copy of this Decree within a reasonable time of not less
11 than thirty (30) days prior to the execution of any agreement for acquisition or
12 assumption of control of any or all of Defendant's facilities, or any other material
13 change in corporate structure, and will simultaneously provide the EEOC with
14 written notice of same.

15
16 B. During the term of this Decree, Defendant and their successors will
17 ensure that each of their directors, officers, human resource personnel, managers,
18 supervisors, and leads is aware of any term(s) of this Decree which may be related
19 to his/her job duties.

20 C. Unless otherwise stated, all notices, reports and correspondence
21 required under this Decree will be delivered to the attention of Anna Y. Park,
22 Regional Attorney, U.S. Equal Employment Opportunity Commission, Los
23 Angeles District Office, 255 E. Temple St., 4th Fl., Los Angeles, CA 90012.

24 D. The parties agree to entry of this Decree and judgment subject to final
25 approval by the Court.


1 **XVI. COUNTERPARTS AND FACSIMILE SIGNATURES**

2 This Decree may be signed in counterparts. A facsimile signature will have
3 the same force and effect of an original signature or copy thereof.

4 All parties, through the undersigned, respectfully apply for and consent to
5 the entry of this Decree as an Order of this Court.
6


7
8 U.S. EQUAL EMPLOYMENT
9 OPPORTUNITY COMMISSION
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11
12 Dated: 1/12, 2012

13 By: 
14 Anna Y. Park, Regional Attorney
15 Attorneys for Plaintiff EEOC
16

17
18 Shack-Findlay Automotive, LLC
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21 Dated: 1/5, 2012

22 By: 
23 Gregory H. King
24 Attorneys for Defendant
25 Shack-Findlay Automotive, LLC
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ORDER

GOOD CAUSE having been shown, the provisions of the foregoing
Consent Decree are hereby approved.

IT IS SO ORDERED.

Date: 1/23/12



Hon. **Kent J. Dawson**
United States District Judge

Exhibit A

Exhibit A



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Las Vegas Local Office

333 Las Vegas Blvd. South, Suite 8112
Las Vegas, NV 89101
Intake Information Group: (800) 669-4000
Intake Information Group TTY: (800) 669-6820
Las Vegas Status Line: (866) 408-8075
Las Vegas Direct Dial: (702) 388-5013
TTY (702) 388-5098
FAX (702) 388-5094

NOTICE OF CONSENT DECREE

TO: ALL EMPLOYEES OF FINDLAY HONDA HENDERSON

The U.S. Equal Employment Opportunity Commission filed a lawsuit in the United States District against Findlay Honda Henderson, et al., Case No. 2:10-cv-01692-KJD-RJJ. The U.S. Equal Employment Opportunity Commission is commonly referred to as the EEOC for short.

The lawsuit was brought by the EEOC on behalf of two African American employees, alleging that they had been subjected to racial harassment, discrimination, and retaliation when they opposed such harassment. Findlay Honda Henderson denied these allegations, but agreed to settle the case by entering into a "Consent Decree" with the EEOC.

Pursuant to the Consent Decree, Findlay Honda Henderson is providing notice to all of its employees that alleged violations of its policy against harassment and discrimination will be thoroughly investigated. Individuals found to have violated that policy will be subject to discipline up to and including termination of employment. All employees will undergo training to correct and prevent unlawful harassment and discrimination towards employees.

Federal law requires that there be no racial harassment or discrimination against any employee or applicant for employment because of a person's age, disability, race, sex, color, religion or national origin, with respect to hiring, compensation, promotions, discharge, terms and conditions or privileges of employment.

Findlay Honda Henderson is committed to complying with federal anti-discrimination laws in all respects. It will not tolerate sex harassment or discrimination, and will not tolerate retaliation against any employee because of the filing of a charge of discrimination, giving testimony or assistance, or participation in any manner in any investigation.

If you believe that you have been racially harassed, discriminated against because of your sex, national origin, age, race, color, religion, or disability, you may follow Findlay Honda Henderson's internal procedure and/or you may seek assistance from:

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
333 Las Vegas Blvd., Suite 8112
Las Vegas, Nevada 89101
Telephone: (702) 388-5099